

## Children affected by Armed Conflict in Sri Lanka: Recommendations to the Security Council Working Group

February 2010

The Coalition to Stop the Use of Child Soldiers ('the Coalition') and the Watchlist on Children and Armed Conflict ('Watchlist') welcome the report of the Special Envoy of the Special Representative for Children and Armed Conflict to Sri Lanka ('Special Envoy' hereafter) following his mission from 5-11 December 2009. The following points are made in response to the report. We hope they will assist the Security Council Working Group on Children and Armed Conflict (SCWG) in the finalization of its conclusions on Sri Lanka.

### The Sri Lankan Context

The issue of child soldiers and other conflict related abuses against children should be considered within the context of the long armed conflict that has affected the country and the current post-conflict environment in which serious human rights violations continue to be reported. Despite the end of the war, the current environment in Sri Lanka is not conducive to the promotion and protection of the rights of children, including those affected by armed conflict who now face many challenges in returning and reintegrating into their families and communities. In particular, tightening restrictions on freedom of expression, manifested in threats, harassment, physical attacks and arrests of members of the media, human rights actors and others, has contributed to an environment in which independent monitoring of human rights is obstructed. Key institutions for the protection of human rights, namely the Human Rights Commission and the Police Commission, have had their independence compromised by the irregular appointment of their Commissioners.

### Key Concerns and Recommendations

#### 1. Child Soldiers

##### Recruitment by the LTTE

The Special Envoy noted in his report an increased level of recruitment by the LTTE during the final phase of the conflict. However, it is important to stress that the recruitment began in the early days of the 2002 ceasefire and is believed to have resulted in the recruitment of thousands of children by the LTTE, particularly in the East.<sup>1</sup>

Information available indicates that over 500 children alleged to be former child soldiers are currently detained in rehabilitation centres. UNICEF has access to these children. However, it is

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<sup>1</sup> "Between the signing of the ceasefire and November 2004, UNICEF documented 3,516 cases of child recruitment by the LTTE", cited in Human Rights Watch, *Living in Fear: Child Soldiers and the Tamil Tigers in Sri Lanka*, November 2004. UNICEF notes that its numbers represent only a portion of the total number recruited. UTHR(J) estimated at least 5,000 children were recruited in Batticaloa District alone from shortly before the ceasefire through to March 2003, cited in UTHR(J), *Child conscription and peace: A tragedy of contradictions*, March 2003.

unclear when they will be released and reunited with their families.<sup>2</sup> Hundreds of others, including children formerly associated with the LTTE and other armed groups who were recruited as children but are now over 18, are unaccounted for.<sup>3</sup> We thus welcome the Special Envoy's recommendations that the whereabouts of such children is established and that they, together with other war affected children, are provided with adequate support to facilitate their recovery and reintegration. We further believe that important lessons can be learned about the effectiveness of international interventions to prevent the further recruitment and use of child soldiers from the experiences of Sri Lanka generally and the LTTE specifically.

#### Recruitment by the Karuna Group and the TMVP

As the Special Envoy noted in his report, all but two children were released from the Tamil Makkal Viduthalai Puligal (TMVP) following the signing of an Action Plan in December 2008. However, the Coalition and Watchlist are concerned that recruitment and re-recruitment of children is continuing in Ampara district in the Eastern Province, according to the Special Envoy's report. Also, the two under-18s believed to have been associated with the TMVP remain unaccounted for. We agree with the Special Envoy's recommendations that the whereabouts of the two remaining cases should be cleared. In addition, the UN-led 1612 Taskforce should conduct an investigation into the allegations of recruitment of children by individuals operating in the Eastern Province.

#### Disarmament, Demobilization and Reintegration

The Coalition and Watchlist welcome the Special Envoy's findings and detailed recommendations on the legal framework and programs for children formerly associated with armed groups. In addition to the recommendations made by the Special Envoy, the Coalition and Watchlist ask the SCWG to address changes to the legal framework for rehabilitation which currently risks facilitating human rights violations.<sup>4</sup>

#### Recommendations

- Urge the Sri Lankan government to implement its "zero tolerance" policy regarding the recruitment of children. In particular, the government should initiate criminal investigations into all allegations of such practices and prosecute individuals found guilty of this crime under Sri Lankan domestic law (cp: Report of Special Envoy, recommendation 11, p. 19; S/2009/325, para 58c)
- In addition to initiating criminal investigations into allegations of current recruitment of children in Ampara District in the Eastern Province by Iniya Barrathi of the TMVP breakaway faction, recommend investigations into the role of Karuna, Pillayan and others in the Karuna Group and the TMVP who are alleged to have been responsible for recruitment of children in the past. If the allegations are substantiated, prosecutions should follow (not reflected in Report of Special Envoy)
- Request the UN-led 1612 Taskforce to conduct an investigation into the allegations of recruitment of children by individuals operating in the Eastern Province (cp. Report of Special Envoy, p. 7)

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<sup>2</sup> BBC News, "Second chance for Tamil former child soldiers", 23 December 2009, <[http://news.bbc.co.uk/2/hi/south\\_asia/8400366.stm](http://news.bbc.co.uk/2/hi/south_asia/8400366.stm)>; International Crisis Group, *Sri Lanka: A Bitter Peace*, 11 January 2010, p. 9,

<[http://www.crisisgroup.org/library/documents/asia/south\\_asia/sri\\_lanka/b99\\_sri\\_lanka\\_\\_\\_a\\_bitter\\_peace.pdf](http://www.crisisgroup.org/library/documents/asia/south_asia/sri_lanka/b99_sri_lanka___a_bitter_peace.pdf)>

<sup>3</sup> Office of the Special Representative of the Secretary-General for Children and Armed Conflict, "Sri Lanka: No effort should be spared for the children affected by conflict", 11 December 2009, <<http://www.un.org/children/conflict/english/pr/2009-12-11228.html>>

<sup>4</sup> See attached Coalition briefing on "*The legal regime for the 'rehabilitation' of child soldiers and its implementation violate international law,*" December 2009.

- Call for the Sri Lankan government and donors to support strong and effective DDR programs for children formerly associated with armed groups (not reflected in Report of Special Envoy)
- Call on the Sri Lankan government to amend the 2008 Regulation (1580/5, 15 December 2009) to extend its application to all individuals who were under 18 at the time of their recruitment or at the time of their alleged offence (cp: Report of Special Envoy, recommendation 10, p. 18; S/2009/325 para. 58a)
- Call on the Sri Lankan government to amend the 2008 Regulation to ensure that the Magistrate's review procedure fully complies with international law and standards of fair trial, in particular standards governing juvenile justice (cp: Report of Special Envoy, recommendation 4, p. 17)

## 2. Accountability

The Coalition and Watchlist urge the SCWG to address impunity and demand accountability of perpetrators of child rights violations to maintain its credibility in line with the commitments made in Security Council Resolutions 1612 and 1882. The 2009 Secretary-General's report on Children and Armed Conflict in Sri Lanka urged the Government of Sri Lanka "to take all possible measures to avoid further killing and maiming of civilians, in particular children, during its military operations against LTTE" and to "facilitate access of humanitarian actors and the delivery of assistance to internally displaced persons, including the many children" (S/2009/325 para. 57a and b). The report also requested the LTTE "to immediately release all children and their caregivers, cease all attacks on civilians and suicide bombings, and to immediately cease all recruitment and re-recruitment of children under 18 years of age and to release those recruited to their ranks. (S/2009/325 para. 57c-e)

To date, there have not been any credible investigations into human rights violations, including child rights violations, committed during the armed conflict in Sri Lanka. While recruitment of children under 18 years for use in conflict is criminalized in Sri Lanka, there are no known investigations or prosecutions against those accused of recruiting children (i.e., persons under 18 years of age) for use in conflict under the relevant provisions of the Penal Code (Amendment) Act, No.16 of 2006. In particular, the Coalition and Watchlist are concerned that two individuals who were in senior command positions in the Karuna Group and the TMVP when recruitment of children took place, Vinayagamoorthi Muralitharan (alias Karuna, former leader of the Karuna Group) and Sivanesanathurai Chandrakanthan (aka Pillayan, leader of the TMVP), are now holding official positions in government and that no investigation has taken place into the allegations of their involvement in recruiting and using children in armed conflict.<sup>5</sup>

The Special Envoy's report does not provide any information on killing or maiming of children during the conflict. However, an estimated 70,000 people including children were killed during the course of the war as a result of targeted killings, indiscriminate attacks and excessive use of force by all parties to the conflict. At least 7,000 people were killed in the final months of hostilities alone, according to UN sources.<sup>6</sup> Some estimates are significantly higher.<sup>7</sup> The manner in which children

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<sup>5</sup> Karuna was appointed as Minister of National Integration in the current government in March 2009 and Pillayan as Eastern Province Chief Minister in May 2008.

<sup>6</sup> Between 20 January and 7 May 2010 (i.e. not including the final ten days of the conflict) the UN reported that 7,000 civilians were killed and 16,700 wounded, cited in The Guardian, "Sri Lankan troops mop up Tamil Tigers as leader said to have died in bunker", 17 May 2009.

<sup>7</sup> For a summary of estimated numbers of people killed during the final months of the war see UTHR(J), *Let them Speak: Truth about Sri Lanka's Victims of War*, Part V, December 2009.

were used by the LTTE to fight on the frontlines suggests that child soldiers were among those who were killed and injured.

The Coalition and Watchlist also share the Special Envoy's concerns regarding the vulnerability of women and girls in IDP settings to rape and sexual violence and stresses the need to investigate all related allegations. The Coalition and other human rights organizations have received unconfirmed reports of cases of such abuses, including by those suspected of association with the LTTE, during the period May to November 2009. Among those alleged to have been responsible are members of the Sri Lankan military and Criminal Investigation Department, authority figures in IDP camps, "surendee centre"<sup>8</sup> and hospitals and male members of the Tamil community as well as relatives.

Human rights protection in Sri Lanka is, and has for many years been severely hampered by a lack of accountability. The criminal justice system has frequently failed to investigate or prosecute cases of human rights violations, and although a series of commissions of inquiry have been established over the years, they have often lacked independence and impartiality and have not lead to prosecutions of those responsible for abuses.<sup>9</sup> The investigation into the complicity of elements of the Sri Lankan security forces in the recruitment of children by the Karuna Group is a case in point: neither have the results of the investigation been published, nor has anyone been held to account.

The absence of a legislative or policy framework to protect victims and witnesses further hampers effective investigations into human rights abuses in Sri Lanka. Similarly, the absence of the doctrine of command responsibility in Sri Lanka's criminal law may stand in the way of accountability of those responsible for ordering the recruitment of children or other grave violations of human rights.

#### Recommendations

The SCWG should urge the Sri Lankan government to:

- Initiate immediate, impartial, and independent investigations of all allegations of abuses committed against children through the entirety of the armed conflict, including recruitment and use of child soldiers, killing and maiming, and rape and sexual violence. In view of concerns about political will and domestic capacity, the credibility and effectiveness of investigations should be guaranteed through international involvement in them. In particular, the investigations should establish the numbers, identities and the manner of death of children killed or injured during the armed conflict. Individuals accused of having committed or been complicit in committing such crimes should be prosecuted in trials that meet international standards (not reflected in Report of Special Envoy)
- Publish without further delay the results of the inter-ministerial committee established by the government in 2007 to investigate allegations of state complicity in the recruitment of children by the Karuna Group (cp: Report of Special Envoy, recommendation 12, p. 18, S/2009/325 para. 58c)
- Adopt and implement separate legislation on witness protection and reparations for victims and amend the penal code to incorporate the concept of command responsibility (not reflected in Report of Special Envoy)
- In addition to criminal investigations and prosecutions, cooperate with international experts to establish a credible mechanism through which the truth about abuses that took place during the conflict, including against children, can be established (cp: Report of Special Envoy, recommendation 17, p. 19)

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<sup>8</sup> The use of the term 'surendee' reflects popular usage and should not be understood as carrying any legal meaning.

<sup>9</sup> International Commission of Jurists, *Post-War Justice in Sri Lanka: Rule of Law, the Criminal Justice System and Commissions of Inquiry*, January 2010.

- Take effective measures to ensure that children and women, in particular those in IDP and “surendee centres”, are protected against rape and sexual violence (cp: Report of Special Envoy, recommendation 9, p. 18)
  - Prioritize children in any future national reconciliation process and ensure that children’s needs are taken into consideration during such a process. To this end, call on the UN Country Team to prioritize these imperatives (not reflected in Report of Special Envoy)
3. Recommendations for follow-up

The SCWG should take the following additional actions:

- Request additional information from the Secretary-General in the form of an updated report on Sri Lanka within 3 months to review progress made by various actors in complying with the actions requested in these conclusions and update and/or revise conclusions as appropriate (not reflected in Report of Special Envoy)
- As a component of the follow-up to the visit of the Special Envoy, agree to send a delegation of the Working Group to Sri Lanka to review progress on implementation of recommendations and meet with key actors to demonstrate commitment of the SCWG-CAC (not reflected in Report of Special Envoy)
- Request from the Secretary-General that a lessons-learned study be carried out to inform future interventions to protect children against recruitment and use in Sri Lanka and elsewhere (not reflect in Report of Special Envoy)